

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

XIAO YE BAI,

Plaintiff

v.

CALVIN JOHNSON, *et al.*,

Defendants

Case No. 2:20-cv-02192-GMN-DJA

ORDER

I. DISCUSSION

On December 2, 2020, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1). Plaintiff’s application to proceed *in forma pauperis* is incomplete.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three of the following documents to the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court’s approved form (i.e. pages 1 through 3 with the inmate’s two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court’s approved form), and

(3) a copy of the **inmate’s prison or jail trust fund account statement for the previous six-month period**.

Plaintiff has not submitted a Financial Certificate with his application to proceed *in forma pauperis*. The Court notes Plaintiff’s explanation regarding the Financial Certificate at page 4 of ECF No. 1, however, Plaintiff must still make an attempt to secure and submit a properly signed Financial Certificate.

1 Accordingly, the Court denies Plaintiff's application to proceed *in forma pauperis*
2 (ECF No. 1) without prejudice because the application is incomplete. The Court will grant
3 Plaintiff a **one-time extension** to file a fully complete application to proceed *in forma*
4 *pauperis* containing all three of the required documents. Plaintiff will file a fully complete
5 application to proceed *in forma pauperis* on or before **February 1, 2021**. Absent unusual
6 circumstances, the Court will not grant any further extensions of time.

7 If Plaintiff does not file a fully complete application to proceed *in forma pauperis*
8 with all three required documents on or before **February 1, 2021**, this case will be subject
9 to dismissal without prejudice for Plaintiff to file a new case with the Court when Plaintiff
10 is able to acquire all three of the documents needed to file a fully complete application to
11 proceed *in forma pauperis* or pays the full \$402 filing fee.

12 A dismissal without prejudice means Plaintiff does not give up the right to refile the
13 case with the Court, under a new case number, when Plaintiff has all three documents
14 needed to submit with the application to proceed *in forma pauperis*. Alternatively, Plaintiff
15 may choose not to file an application to proceed *in forma pauperis* and instead pay the
16 full filing fee of \$402 on or before **February 1, 2021** to proceed with this case.

17 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1), but the Court
18 will not file the complaint unless and until Plaintiff timely files a fully complete application
19 to proceed *in forma pauperis* with all three documents or pays the full \$402 filing fee.

20 **II. CONCLUSION**

21 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed
22 *in forma pauperis* (ECF No. 1) is denied without prejudice to file a new fully complete
23 application to proceed *in forma pauperis* with all three documents.

24 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
25 approved form application to proceed *in forma pauperis* by an inmate, as well as the
26 document entitled information and instructions for filing an *in forma pauperis* application.

27 IT IS FURTHER ORDERED that on or before **February 1, 2021**, Plaintiff will either
28 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52

1 administrative fee) or file with the Court:

2 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
3 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
4 signatures on page 3),

5 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
6 official (i.e. page 4 of this Court's approved form), and

7 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
8 **previous six-month period.**

9 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
10 application to proceed *in forma pauperis* with all three documents or pay the full \$402
11 filing fee for a civil action on or before **February 1, 2021**, this case will be subject to
12 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case
13 number, when Plaintiff has all three documents needed to file a complete application to
14 proceed *in forma pauperis* or pays the the full \$402 filing fee.

15 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
16 (ECF No.1-1) but will not file it at this time.

17 DATED: December 3, 2020

18 
19 UNITED STATES MAGISTRATE JUDGE

United States District Court
DISTRICT OF NEVADA

Plaintiff/Petitioner,
v.

Defendant/Respondent,

**APPLICATION TO PROCEED
IN FORMA PAUPERIS
FOR INMATE**

CASE NUMBER:

I, _____, declare that I am the (*check the appropriate box*)

___ Plaintiff
(filing 42 U.S.C. § 1983)

___ Movant
(filing 28 U.S.C. § 2255 motion)

___ Petitioner
(writ of habeas corpus
28 U.S.C. §§ 2254 or 2241)

___ Other
___ Defendant/Respondent

in this case. I am unable to prepay the fees of this proceeding or give security because of my poverty. I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees incurred by me as a result of being granted leave to proceed *in forma pauperis*.

In further support of this application, I answer the following questions:

1. Are you presently employed? ___Yes ___No
 - a. If the answer is “yes,” state the amount of your salary or wages per month, and give the name and address of your employer. (List gross and net salary.)
 - b. If the answer is “no,” state the date of last employment and the amount of the salary or wages per month which you received.
2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or other form of self-employment? ___Yes ___No

- | | | | |
|----|---|------------------------------|-----------------------------|
| b. | Rent payments, interest or dividends? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | Pensions, annuities or life insurance payments? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | Gifts or inheritances? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. | Any other sources? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings accounts (include any funds in prison accounts, and any funds on deposit with a bank, saving & loan, etc., outside the prison) ?

☐ Yes ☐ No

If the answer is "yes," state the total value and list the location of each account, type of account, and amount or balance in the account. Do not include your account number(s).

4. Do you own or have any interest in any real estate, stocks, bonds, notes, trusts, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

☐ Yes ☐ No

If the answer is "yes," describe the property, its location and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support each month.

6. Do you receive any income from disability, Social Security or any other pension?

☐ Yes ☐ No

If the answer is "yes," describe the source and amount received each month.

7. Have you placed any property, assets or money in the name or custody of anyone else in the last two years?

☐ Yes ☐ No

If the answer is "yes," give the date, describe the property, assets or money, give the name of the person given custody of the item and the reason for the transfer.

ACKNOWLEDGMENT

I, the undersigned, acknowledge that I have read the foregoing and that the information contained therein is true and correct to my own knowledge and belief.

Further, I state that I have not directly or indirectly paid or caused to be paid to any inmate, agent of an inmate, or family member of any inmate a sum of money, favors or anything else for assistance in the preparation of this document or any other document in connection with this action.

Further, I acknowledge that if any of the information included in this motion for leave to proceed *in forma pauperis* is false or misleading, I understand that sanctions may be imposed against me. Those sanctions may include, but are not limited to, the following:

- (1) dismissal of my case with prejudice;
- (2) imposition of monetary sanctions;
- (3) the Nevada Department of Prisons may bring disciplinary proceedings for a violation of MJ-48 of the Code of Penal Discipline, which can include all sanctions authorized under the Code including the loss of good time credits and punitive confinement; and
- (4) perjury charges.

Further, I hereby authorize the United States District Court, District of Nevada, or its representative, to investigate my financial status, and authorize any individual, corporation, or governmental entity to release any such information to the said Court or its representative.

Further, I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees and costs incurred by me as a result of being granted leave to proceed *in forma pauperis*.

Dated this ____ day of _____, 20__.

(Signature of Applicant)

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Signed at _____
(Location)

(Signature)

(Date)

(Inmate Prison Number)

FINANCIAL CERTIFICATE

I request that an authorized officer of the institution in which I am confined, or other designated entity, such as Inmate Services for the Nevada Department of Prisons (NDOC), complete the below Financial Certificate.

I understand that:

(1) if I commence a petition for writ of habeas corpus in federal court pursuant to 28 U.S.C. § 2254, the filing fee is \$5.00, and that such fee will have to be paid by me if the court denies my *in forma pauperis* application;

(2) if I commence a civil rights action in federal court pursuant to 42 U.S.C. § 1983, the filing fee is \$400.00 (which includes the \$350 filing fee and a \$50 administrative fee), which I must pay in full; and

(a) if my current account balance (line #1 below) is \$400.00 or more, I will not qualify for *in forma pauperis* status and I must pay the full filing fee of \$400.00 before I will be allowed to proceed with the action;

(b) if I do **NOT** have \$400.00 in my account as reflected on line #1 below, before I will be allowed to proceed with an action I will be required to pay 20% of my average monthly balance (line #2 below), or the average monthly deposits to my account (line #3 below), whichever is greater, and thereafter I must pay installments of 20% of the preceding month's deposits to my account in months that my account balance exceeds \$10.00 (if I am in the custody of the NDOC, I hereby authorize the NDOC to make such deductions from deposits to my account, and I further understand that if I have a prison job, then the 20% of my paycheck that is guaranteed to me as spendable money will be sent to the court for payment of the filing fee); and

(c) I must continue to make installment payments until the \$350.00 filing fee is fully paid, without regard to whether my action is closed or my release from confinement. The \$50 administrative fee will be waived only if I am granted permission to proceed *in forma pauperis*.

Type of action (check one): ☐ civil rights ☐ habeas corpus

INMATE NAME (printed) _____

SIGNATURE & PRISON NUMBER _____

1. CURRENT ACCOUNT BALANCE _____

2. AVERAGE MONTHLY BALANCE* _____

3. AVERAGE MONTHLY DEPOSITS* _____

4. FILING FEE (based on #1, #2 or #3, whichever is greater) _____

* for the past six (6) months, from all sources, including amount in any savings account that is in excess of minimum amount that must be maintained

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

**(Please sign in ink in a
color other than black.)**

AUTHORIZED OFFICER

DATE

TITLE